

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EDWARD PHILLIP MCKENNA,
Plaintiff,
v.
T. CISNEROS, et al.,
Defendants.

No. 2:22-cv-01294-KJM-CKD P

FINDINGS & RECOMMENDATIONS

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

By order filed April 11, 2023, the court screened plaintiff's second amended complaint. ECF No. 53. The undersigned dismissed the Eighth Amendment excessive force claims alleged to have occurred on February 18, 2021 involving defendants Cisneros, Leahy, Garcia, Tyler, Coronado, Sayama, Diaz, Brown, Dunn, Valdez and Knudson, but granted plaintiff leave to amend these claims within thirty days. ECF No. 53 at 11. Plaintiff was granted an extension of time to file objections to the Findings and Recommendations that were included in the April 11, 2023 court order. ECF No. 56. The elapsed time period has now expired and plaintiff has not filed any objections or a third amended complaint. Plaintiff was advised in the April 11, 2023 order that his failure to file an amended complaint would result in a recommendation that this

1 action be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure with respect to
2 these claims. See ECF No. 53 at 11.

3 Accordingly, IT IS HEREBY RECOMMENDED that the Eighth Amendment excessive
4 force claims alleged to have occurred on February 18, 2021 involving defendants Cisneros,
5 Leahy, Garcia, Tyler, Coronado, Sayama, Diaz, Brown, Dunn, Valdez and Knudson be dismissed
6 without prejudice. See Local Rule 110; Fed. R. Civ. P. 41(b).

7 These findings and recommendations are submitted to the United States District Judge
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
9 after being served with these findings and recommendations, plaintiff may file written objections
10 with the court and serve a copy on all parties. Such a document should be captioned
11 “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that
12 failure to file objections within the specified time may waive the right to appeal the District
13 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

14 Dated: June 22, 2023



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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